

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DERECK MCKINNIE,	:	
Plaintiff,	:	Civil Action No. 15-0452 (CCC)
v.	:	MEMORANDUM OPINION
HOBOKEN PROSECUTOR SUSAN	:	
FERRARO, <u>et al.</u> ,	:	
Defendants.	:	

CECCHI, District Judge.

Plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The Court previously dismissed the Complaint without prejudice for failing state a claim upon which relief may be granted. (ECF No. 29 at 5.) The Court found Plaintiff's claims did not state any violation of a federal right, because Plaintiff did not have a right to compel the State to initiate prosecution against third parties. (*Id.*) The Court afforded Plaintiff an opportunity to amend. (*Id.* at 6.)

Presently before the Court is Plaintiff's Amended Complaint. (ECF No. 31.) Plaintiff again asserts claims against Defendants for "never charg[ing] someone with a crime or civil violation and seek criminal conviction or a civil judgment." (*Id.* at 2.) For the same reasons as the Court stated in its prior opinion, these allegations do not state a claim upon which relief may be granted. (*See* ECF No. 29 at 5.)

Plaintiff also, for the first time, asserts Defendant William Conklin, an administrative assistant for an unspecified organization, denied Plaintiff's right to appeal in a federal case filed in this district court, *McKinnie v. Hudson Cty. Prosecutor Office*, Case No. 13-7290 (D.N.J. filed

Nov. 22, 2013). (ECF No. 31 at 5.) However, the Court is not aware of any individual with that name who works in this district court. Given that Plaintiff must file his appeal in his federal case with this district court, the Court is unsure how Conklin could have violated Plaintiff's rights. "A finding of liability under 42 U.S.C. § 1983 requires that the defendant . . . have exercised *power possessed by virtue of state law* and made possible only because the *wrongdoer* is clothed with the authority of state law." *Zelinski v. Pa. State Police*, 108 F. App'x 700, 703 (3d Cir. 2004) (quoting *Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 23 (3d Cir. 1997)) (emphasis added). Since Conklin is not an employee of this district court, he did not have the power to accept any appeal Plaintiff may have filed in this district court, let alone deny Plaintiff's right to appeal in a federal case. Therefore, Plaintiff has failed to state a claim upon which relief may be granted against Conklin.

To the extent Plaintiff can cure the deficiencies identified in this Opinion and this Court's prior February 29, 2016 Opinion (ECF No. 30), the Court will allow Plaintiff one more opportunity to amend his Amended Complaint. Within thirty (30) days from the date of entry of the accompanying Order, Plaintiff may submit to the Court an amended complaint that is consistent with the holdings of this Opinion, and one that satisfies the pleading requirements under Rule 8 of the Federal Rules of Civil Procedure.¹



Claire C. Cecchi
United States District Judge

Date: April 12, 2016

¹ Because the Court is dismissing the Complaint, Defendants' motion to dismiss, ECF No. 33, is denied as moot.